

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:F:LI:POSTF-116312-02
HNAdams

date: May 3, 2002

to: Large & Mid Size Business Division
Attn: Howard Silverman, Revenue Agent

from: Associate Area Counsel (Financial Services)
CC:LM:F:LI

subject: [REDACTED], Inc. & Subsidiaries - Extensions of Statute of
Limitations

U.I.L. No. 6501.08-00

This memorandum responds to your request for assistance dated March 20, 2002. This memorandum should not be cited as precedent.

BACKGROUND

For purposes of this response, we understand the facts are as follows.^{1/} [REDACTED], Inc. was a corporation organized under the laws of Delaware. During the years at issue ([REDACTED], [REDACTED], and [REDACTED] (short year)), it filed consolidated Federal corporate income tax returns as the common parent of an affiliated group of corporations that included itself and its subsidiaries.

After the years at issue, [REDACTED], Inc. merged into [REDACTED], Inc. [REDACTED], Inc., a corporation also organized under the laws of Delaware, was the surviving corporation.^{2/} The amended and restated agreement and plan of merger provided as follows:

¹ Our understanding of the facts is based on information we have received from you.

² Holders of [REDACTED], Inc. common stock received [REDACTED], Inc. common stock in exchange for their shares.

1. The Merger. [REDACTED]

Neither [REDACTED] Inc. nor any of the members of its consolidated group designated [REDACTED] Inc. to act in its place. See Treas. Reg. § 1.1502-77(d).

ISSUES

1. From what entity should the agent seek waivers of the statutes of limitations for the years at issue during which the [REDACTED] Inc. consolidated group existed and how should the Forms 872 be worded?

2. Who may execute the consent?

CONCLUSIONS

1. [REDACTED] Inc. may waive the statutes of limitations for the years at issue as the successor to [REDACTED] Inc. The Forms 872 should be worded:

[REDACTED] Inc. (EIN: [REDACTED]), as successor to [REDACTED] Inc. (EIN: [REDACTED]), and as agent for the members of the [REDACTED] Inc. and Subsidiaries consolidated group.*

Put an asterisk after "group." At the bottom of the Form 872, add:

*This is with respect to the consolidated tax of the [REDACTED] Inc. and Subsidiaries consolidated group.

2. The consent may be signed by any individual who has authority to sign the returns of [REDACTED] Inc., such as its president, vice-president, treasurer, assistant treasurer, chief accounting officer, and any other officer duly authorized so to act.

ANALYSIS

Issue 1

With exceptions not relevant here,^{3/} the consolidated return regulations make the common parent of a group of corporations that file as a consolidated group for a taxable year the sole agent of the members of the group for matters relating to the tax liability for the year. As is relevant here, the regulations provide that

the common parent in its name will give waivers, give bonds, and execute closing agreements, offers in compromise, and all other documents, and any waiver or bond so given, or agreement, offer in compromise, or any other document so executed, shall be considered as having also been given by each subsidiary.

Treas. Reg. § 1.1502-77(a). Specifically as applies to waivers of the statute of limitations on the assessment and collection of tax, the regulations provide that a waiver given by a common parent "shall be applicable --

(1) To each corporation which was a member of the group during any part of such taxable year, and

(2) To each corporation the income of which was included in the consolidated return for such taxable year, notwithstanding that the tax liability of any such corporation

³ The regulations provide that the common parent is not the agent of its subsidiaries for purposes of filing consents under Treas. Reg. § 1.1502-75(a)(1) to be included in a consolidated group, making an election under I.R.C. § 936(e), making an election to be treated as a DISC under Treas. Reg. § 1.992-2 and a change of the annual accounting period pursuant to Treas. Reg. § 1.991-1(b)(3)(ii). Treas. Reg. § 1.1502-77(a).

is subsequently computed on the basis of a separate return under the provisions of § 1.1502-75.

Treas. Reg. § 1.1502-77(c). The regulations specify that subsidiaries generally have no authority to act for themselves. Treas. Reg. § 1.1502-77(a).

Temporary regulation section 1.1502-77T(a)(3) provides that, if the corporation that is the common parent of a group ceases to be the common parent, whether or not the group remains in existence, a waiver of the statute of limitations with respect to the group given by various other corporations is deemed to be given by an agent of the group. One of the corporations so listed is "[a] successor to the former common parent in a transaction to which section 381(a) applies * * *." Temp. Treas. Reg. § 1.1502-77T(a)(4)(ii). Section 381(a) applies to transactions in which one corporation acquires the assets of another corporation in a transfer to which section 361 applies if the transfer is in connection with a reorganization described in subparagraph (A) of section 368(a)(1) applies. Subparagraph (A) of section 368(a)(1) applies to statutory mergers under Delaware law such as those by which [REDACTED] Inc. succeeded to [REDACTED] Inc. See J.E. Seagram Corp. v. Commissioner, 104 T.C. 75, 93 (1995).

Issue 2

A consent on behalf of a corporation may be signed by an individual who has authority to sign the corporation's returns, such as its president, vice-president, treasurer, assistant treasurer, chief accounting officer, and any other officer duly authorized so to act. Rev. Rul. 83-41, 1983-1 C.B. 349, clarified and amplified by Rev. Rul. 84-165, 1984-2 C.B. 305. The fact that an individual's name is signed on a corporate return is prima facie evidence that the individual had authority to do so. Id.

This opinion is based on the facts set forth herein. It might change if the facts are determined to be incorrect or if additional facts are developed. If the facts are determined to be incorrect or if additional facts are developed, this opinion should not be relied upon. You should be aware that, under routine procedures that have been established for opinions of this type, we have referred this memorandum to the Office of Chief Counsel for review. That review might result in

modifications to the conclusions herein. We will inform you of the result of the review as soon as we hear from that office. In the meantime, the conclusions reached in this opinion should be considered to be only preliminary. If we can be of further assistance, you may call the undersigned at (516) 688-1737.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse affect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

ROLAND BARRAL
Area Counsel (Financial
Services:Manhattan)

By: *H N Adams III*
HALVOR N. ADAMS III
Senior Attorney